IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 235 of 1993

For Approval and Signature:

THE HON'BLE MR.JUSTICE C.K.BUCH

==========

1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copyu of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the constituition of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judgte ?

==========

NAGARBHAI NANUBHAI VAGHELA - Petitioner(s)

Versus

VASHRAMBHAI RAMJIBHAI AND 4 OTHERS. &5 - Respondent(s)

==========

Appearance :

NOTICE SERVED for Petitioner No(s).: 1.(MR AD PADIVAL) for Petitioner No(s).: 1.
MR MD RANA for Respondent No(s).: 1,2,3,4.
Mr. LR Pujari, Addl. PUBLIC PROSECUTOR for Respondent No(s).: 5.

==========

CORAM :THE HON'BLE MR.JUSTICE C.K.BUCH

Date : 15/06/2005

ORAL JUDGMENT

I have considered the submissions made by ld. APP Mr. Pujari for the State. In response to the query raised by the Court, ld. APP Mr. Pujari has clarified that no appeal against the order of

acquittal has been filed by the State till this date.

The present Cri. Rev. Application is filed by the petitioner- original complainant of Criminal Case No. 2014/1991 decided at the conclusion of the trial by the ld. Metropolitan Magistrate, Court No.4, , Ahmedabad vide judgment and order dated 19.04.1993. On the complaint of the present petitioner, four accused persons i.e. Respondent Nos. 1 to 4 were prosecuted for the offence punishable under sections 324, 405 R/w section 114 of the Indian Penal Code and also under section 135(1) of the Bombay Police Act for the alleged incident that had occurred in the area known as Dudhwali Chawl, Baherampura, Ahmedabad. After conclusion of the trial, ld. Metropolitan Magistrate, Ahmedabad acquitted the accused for all the charges levelled against them holding that the prosecution has failed in bringing home the charge beyond reasonable doubt. The incident though had occurred between 10 &11 A.M., none of the witnesses have come forward to support the say of the complainant which can be said to be an eye witness. It is observed by the ld. Judge that the prosecution has not examined any independent witness and there must be some scuffle between the persons on account of a dispute of trifle nature and there is no legal evidence to satisfy the Court available on record on the basis of which the accused can be connected with the offence alleged against them.

It would be proper to have a bird's eye-view on the facts of the prosecution case. It is the say of the prosecution that on prosecution that on 6.4.1991 at about 11.00 P.M., daughter-in-law of the accused Vashram was pouring some water in the area abutting the house of the residence and complainant at that time asked her not to do so. At that time, it is alleged that all the accused persons as they were there in the house, came out of the house in excited mood and abused the complainant and when complainant asked them not to speak in abusive language and use filthy language, accused no.1 Vashram had given a blow on the right eye of the complainant and accused No.2 Ashok gave a iron-pipe blow on the left hand of the complainant and other accused persons had given fist blows to the injured persons.

Ld. Metropolitan Magistrate has considered the material contradiction and improvement made by the injured witness and there is a positive finding in the judgment that the injury certificate exh.10 does not corroborate the oral version of the injured witness- complainant. The allegation against accused no.1 was that he had inflicted a blow over the right eye with a sharp cutting instrument- a razor (Astra), but according to the medical evidence, no injury which can be caused caused by sharp-cutting instrument was found on a particular part of the body and according to the medical certificate exh.10, it was a Contused Lacerated Wound (CLW). For short, ld. Magistrate has rightly

observed that when no independent witness has been examined by the prosecution and there are material contradictions in the evidence of the injured witness himself and his evidence is not adequately corroborated by the medical evidence, the accused persons deserve acquittal. Finding of the Ld. Magistrate is absolutely legal and is not required to be disturbed.

The reasons recorded by the ld. Magistrate are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of **Dwarkadas v/s State of Hariyana, reported in (2002)1 SCC 204,** has reiterated the accepted principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is also possible. In the same way, the observations of the Apex Court in the case of **Kanshiram v/s State of Madhya Pradesh (Re: Para-21) , AIR 2001 SC 2902,** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio of the above-cited decision, there is no merits in the present Cri. Rev. Application and the same requires to be dismissed..

Hence, Cri. Rev. Application is dismissed. Impugned order of acquittal dated 19.04.1993 passed by ld. Metropolitan Magistrtae, Court No. 4, Ahmedabad in Criminal Case No. 2014/1991 acquitting the respondents accused, is hereby confirmed. Rule is discharged.

[C.K. BUCH, J]

*rawal